IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.275 of 1992

Date of decision : August 9, 2007

State of H.P. **…Appellant.**

Versus

Jagat Ram and another **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? Yes

For the Appellant : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

For the Respondents : Mr. Ramakant Sharma, Advocate.

Surjit Singh, Judge(Oral)

This appeal by the State is directed against the judgment of the trial Magistrate whereby the respondents, who were charged with and tried for offences under Sections 465, 468, 469, 471, 420 and 409 read with Section 34 of the Indian Penal Code, stand acquitted.

2. Respondent Jagat Ram was Pradhan of a Gram Panchayat upto the year 1985. Respondent Surjit Singh was Secretary of the said Panchayat. In the year 1985 elections for the post of Pradhan of the Panchayat took place afresh and in those elections complainant Ram Prakash was elected as Pradhan. It was alleged that a few days or months before the election, the respondents in connivance with each other forged an application purporting to be written by the complainant and signed by him and as per contents of that application, which was dated 1.1.1980, the complainant had

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Whether reporters of the local papers may be allowed to see the judgment?

applied for borrowing some articles like loudspeakers, record-players, etc. from the Panchayat. Notices were sent to the complainant, a few months before the fresh elections were held, demanding the articles mentioned in the said application back. Complainant wrote back that he had never taken any articles and hence the question of returning those articles did not arise. In fact before receipt of that notice a certificate was issued to the complainant by respondent No.2, the Secretary of the Panchayat, that he owed no debt nor any moveable property of the Panchayat was with him. It was also alleged that after the complainant was re-elected, one resolution was forged in his name by the two respondents pertaining to the removal of one teacher from services and a copy of that resolution was sent to the Chief Minister alongwith a covering letter under the forged signatures of the complainant. The forgery of the resolution and the covering letter was also alleged to have been committed by the two respondents.

3. Trial Court charged both the respondents with offences under Sections 465, 468, 469, 471, 420 and 409 read with Section 34 of the Indian Penal Code.

4. When the matter was taken up for recording the evidence of the prosecution, contention was raised on behalf of the respondents that sanction under Section 197 of the Code of Criminal Procedure having not been obtained, the Court did not have the jurisdiction to take the cognizance of the matter. Trial Court accepted the contention and passed the judgment of acquittal. It is against the said judgment that the present appeal is directed.

5. We have heard the learned counsel for the parties. The criminal acts, which the two respondents are alleged to have committed, have no co-relation, direct or even indirect, with their

functioning as public servants. It is not a part of government servant's duty to commit acts of forgery and cheating. A bare reading of Section 197 of the Code of Criminal Procedure shows that the sanction is required only where the public servant acts or purports to act in discharge of his duties as public servant. A public servant, while committing acts of cheating or forgery, cannot be said to act or purports to act in discharge of his duties as a public servant.

6. The Hon'ble Supreme Court in *Prakash Singh Badal and another versus State of Punjab and others, (2007) 1 Supreme Court Cases 1,* vide para 50, has held as follows:

> "50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence."

7. In view of the above discussed legal position, appeal is accepted. Judgment of the trial Court is set aside. Case is remanded to the trial Court with a direction to try and decide the same afresh, in accordance with law.

(Surjit Singh), J

August 9, 2007(sd) **(Surinder Singh), J**